

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**BASF AGRO B.V., ARNHEM (NL),
WÄDENSWIL BRANCH, BAYER S.A.S.,
AND MERIAL LIMITED,**

Plaintiffs,

v.

CHEMINOVA, INC.,

Defendant.

Civil Action No. 1:10cv274-WO-WWD

ANSWER TO CHEMINOVA, INC.'S COUNTERCLAIMS

Plaintiffs BASF Agro B.V., Arnhem (NL), Wädenswil Branch and Bayer S.A.S. (collectively “Plaintiffs”) answer Defendant Cheminova, Inc.’s (“Cheminova’s”) Counterclaims filed October 29, 2010 as follows:

1. Plaintiffs admit the allegations of paragraph 1 of Cheminova’s Counterclaims.
2. Plaintiffs admit that BASF Agro B.V., Arnhem (NL), Wädenswil Branch (“BASF”) is a limited liability company organized under the laws of The Netherlands, acting through its Swiss branch office, which is organized under the laws of Switzerland. Plaintiffs admit that BASF markets and sells agrochemical compounds and formulations in the United States through its agent and distributor BASF Corporation, which is a Delaware Corporation with its headquarters in Florham Park, New Jersey, and that BASF Corporation operates much of the business relevant to this action out of its Agrochemical Products Division’s United States headquarters located in Research Triangle Park, North Carolina. Plaintiffs deny the remaining allegations of paragraph 2 of Cheminova’s Counterclaims.

3. Plaintiffs admit the allegations of paragraph 3 of Cheminova's Counterclaims.

4. Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of Cheminova's Counterclaims, and accordingly deny them.

5. Plaintiffs admit that in its Counterclaims, Cheminova purports to seek a declaratory judgment that the '010, '743, '943, and '848 patents are not infringed by any acts of Cheminova, and that Cheminova purports to seek a declaratory judgment that the '010 and '743 patents are invalid. The remaining allegations of paragraph 5 state legal conclusions to which no response is required; to the extent that a response is required, Plaintiffs admit that Cheminova purports that its Counterclaims arise under the Declaratory Judgment Act and the Patent Act, but deny that Cheminova is entitled to relief thereunder.

6. The allegations in paragraph 6 state legal conclusions to which no response is required; to the extent that a response is required, Plaintiffs admit the allegations of paragraph 6 of Cheminova's Counterclaims.

7. The allegations in paragraph 7 state legal conclusions to which no response is required; to the extent that a response is required, Plaintiffs admit that a justiciable controversy exists, and that this Court has personal jurisdiction over Plaintiffs by virtue of their commencement of the present action, and deny the remaining allegations of paragraph 7 of Cheminova's Counterclaims.

8. The allegations in paragraph 8 state legal conclusions to which no response is required; to the extent that a response is required, Plaintiffs admit the allegations of paragraph 8 of Cheminova's Counterclaims.

“COUNT I”
“(Declaratory Judgment of Noninfringement of the ‘010, ‘743, ‘943, and ‘848 Patents)”

9. Plaintiffs incorporate by reference their responses in paragraphs 1 through 8 above.

10. Plaintiffs admit the allegations of paragraph 10 of Cheminova’s Counterclaims.

11. Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of Cheminova’s Counterclaims, and accordingly deny them.

12. Plaintiffs deny the allegations of paragraph 12 of Cheminova’s Counterclaims.

13. Plaintiffs deny the allegations of paragraph 13 of Cheminova’s Counterclaims.

14. Plaintiffs admit that in its Counterclaims, Cheminova purports to seek a declaratory judgment from this Court that it has not infringed and does not infringe any claims of the ‘010, ‘743, ‘943, and ‘848 patents, but deny that Cheminova is entitled to such relief.

“COUNT II”
“(Declaratory Judgment of Invalidity of the ‘010 and ‘743 Patents)”

15. Plaintiffs incorporate by reference their replies in paragraphs 1 through 14 above.

16. Plaintiffs admit the allegations of paragraph 16 of Cheminova’s Counterclaims.

17. Plaintiffs deny the allegations of paragraph 17 of Cheminova’s Counterclaims.

18. Plaintiffs admit that in its Counterclaims, Cheminova purports to seek a declaratory judgment from this Court that each of the claims of the ‘010 and ‘743 patents is invalid, but deny that Cheminova is entitled to such relief.

Plaintiffs deny that Cheminova is entitled to the relief it prays for, or any relief at all, for the allegations contained in Cheminova’s Counterclaims.

AFFIRMATIVE DEFENSES

19. Cheminova has failed to state a claim upon which relief may be granted.

20. Plaintiffs specifically reserve the right to assert each and every other defense that may become evident in the course of discovery.

DATED: November 18, 2010

/s/ Pressly M. Millen

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the **ANSWER TO CHEMINOVA, INC.'S COUNTERCLAIMS** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants: Daniel Alan M. Ruley, aruley@belldavispitt.com, William K. Davis, wdavis@belldavispitt.com, Christopher G. Kelly, christopher.kelly@hklaw.com, Steven L. D'Alessandro, steven.dalessandro@hklaw.com, Robert J. Burns, robert.burns@hklaw.com, Joshua C. Krumholz, Joshua.krumholz@hklaw.com, Benjamin D. Enerson, Benjamin.enerson@hklaw.com, Jitendra Malik, jmalik@alston.com, John Patrick Elsevier, jpelsevier@jonesday.com, Matthew W. Howell, matthew.howell@alston.com, Judy C. Jarecki-Black, jduy.jarecki@merial.com, and Frank G. Smith, frank.smith@alston.com.

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